STATE OF MICHIGAN

ATTORNEY GRIEVANCE COMMISSION

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October 30, 2003

Corbin R. Davis, Clerk
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2002-29

Dear Mr. Davis:

Although I have participated actively in the process of assisting the Attorney Discipline Board in producing its recommendations as to standards for attorney discipline, I only have one comment I wish to make regarding these proposed standards. It is my recommendation that adopted standards not apply to consent judgements.

In the preface of the proposed standards, it currently reads that these standards "are intended for use by the Attorney Discipline Board and its hearing panels in imposing discipline following a finding or acknowledgment of professional misconduct." My simple recommendation is that the words "or acknowledgment" be deleted.

Consent judgements, like plea bargains in criminal cases (which are not governed by the sentencing standards–or rather which are justification for deviation from those standards) are frequently based on factors outside the record. Perceived weaknesses of the case, availability of witnesses, certainty of a finding are among reasons for consent judgements which are not covered by the mitigation or aggravation factors of the guidelines. These variables do not exist when there has been a full hearing and a judgement has been made. They only exist during the pre-hearing stage when consents are formulated.

I have argued that consents should not be considered as precedent when considering discipline in other cases, because the factors that went into the consents are usually outside the record. These are valid reasons, but reasons not made public.

I also wish to acknowledge that this opinion is my own. This issue was never discussed with the Attorney Grievance Commissioners.

Yours truly,

Robert L. Agacinski

Robert L. Agacinski
Grievance Administrator

RLA/brm